

REMARKS

Claims 1-26 and 38-49 are pending. Favorable reconsideration is respectfully requested.

The rejection of Claim 16 under 35 U.S.C. §102(b) is believed to be obviated by the amendment submitted above. The cited reference fails to describe or suggest a polynucleotide which comprises at least 23 consecutive nucleotides of the polynucleotide recited in Claim 11. Accordingly, withdrawal of this ground of rejection is respectfully requested.

The rejection of the claims under 35 U.S.C. §101 is respectfully traversed. As recognized by the Examiner, the claimed sequence has RodA activity. As described in the specification of the present application, bacteria transformed with the claimed sequence are useful for the production of L-amino acids. See the specification at page 1, lines 10-12, page 2, line 18 to page 3, line 5, page 8, line 19 to page 9, line 13, and Claim 30. See especially Example 5 at pages 27-29 of the specification. That Example demonstrates the production of an L-amino acid according to the present invention. Certainly, a process for producing L-amino acids is a utility which satisfies the requirements of 35 U.S.C. §101. Accordingly, withdrawal of this ground of rejection is respectfully requested.

The rejections of the claims under 35 U.S.C. §112, first paragraph, is believed to be obviate at least in part by the amendments submitted above and respectfully traversed.

At the outset, Applicants note that the Examiner makes a variety of allegations regarding "knowledge regarding the biological function, biological activity, or utility of polynucleotides which are at least 70%, 80%, or 90% identical to SEQ ID NO: 1" and the

amount of experimentation required to obtain such material. However, the Examiner has not provided any evidence whatsoever in support of these allegations. Therefore, the allegations set forth in the Official Action are unsubstantiated.

The claims are presumed to be enabled unless evidence is provided to the contrary.

The present application provides a detailed description for producing an isolated polynucleotide, which comprises SEQ ID NO:1 and encodes a protein which has the activity of the RodA cell division protein. No evidence has been provided to demonstrate that one skilled in the art cannot produce polynucleotides which are at least 70%, 80%, or 90% identical to SEQ ID NO: 1 and encode a protein which has the activity of the RodA cell division protein, using the detailed procedures set forth in the present specification.

In addition, the detailed description provided by the specification convincingly evidences the fact that the inventors had possession of the claimed invention at the time the present application was filed.

Based of the foregoing, withdrawal of these grounds of rejection is respectfully requested. Accordingly, withdrawal of these grounds of rejection is respectfully requested.

The rejection of Claims 2, 10, and 18 under 35 U.S.C. §112, second paragraph, is respectfully traversed. The claims are definite.

The claims are not interpreted in a vacuum. Rather, they are interpreted in light of the specification. The specification provides a detailed description of the terms “RodA cell division protein” and “RodA protein.” The specification describes the specific amino acid sequence of the RodA protein. Accordingly, one reading Claims 2, 10, and 18 would readily understand the metes and bounds of these claims, in light of the description in the

specification. Therefore, the claims are definite within the meaning of 35 U.S.C. §112, second paragraph. Accordingly, withdrawal of this ground of rejection is respectfully requested.

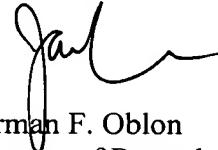
Regarding the Restriction Requirement, non-elected Claims 7-9, 23-25, and 38-47 are method/process claims which depend from the elected claims. Since the elected claims are allowable for the reasons discussed above, those non-elected claims must be rejoined under the provisions of MPEP §821.04.

An Information Disclosure Statements was filed in the present application on February 11, 2002. An acknowledgment that the cited references were considered is respectfully requested in the next communication from the Office.

Applicants submit that the present application is in condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

James J. Kelly, Ph.D.
Registration No. 41,504

Fourth Floor
1755 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 413-3000
Fax #: (703) 413-2220
NFO/JK

I:\atty\JK\212532AM.WPD

Marked-Up Copy

Serial No: 09/950,071

Amendment Filed on:

HEREWITH

IN THE CLAIMS

--1. (Amended) An isolated polynucleotide which encodes a protein comprising the amino acid sequence of SEQ ID NO: 2, wherein said protein has the activity of the RodA cell division protein.

11. An isolated polynucleotide, which comprises SEQ ID NO:1 and encodes a protein which has the activity of the RodA cell division protein.

16. (Amended) An isolated polynucleotide, which comprises at least 30 [15] consecutive nucleotides of the polynucleotide of Claim 11.

38-47. (New).--